

(3) The Board's receipt of the Loan Documents, Guarantee, and any related instruments, properly executed by the Lender, Borrower, and any other required party other than the Board; and

(4) No material adverse change in the Borrower's ability to repay the loan between the date of the Board's approval and the date the Guarantee is to be issued.

(b) The Board may withdraw its approval of an application and rescind its offer of Guarantee if the Board determines that the Lender or the Borrower cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer.

(c) Only after receipt of all the documentation, required by this section, will the Board sign and deliver the Guarantee.

(d) A Borrower receiving a loan guaranteed by the Board under this Program shall pay a one-time guarantee fee of 0.5 percent of the amount of the principal of the loan. This fee must be paid no later than one year from the issuance of the Guarantee.

§ 500.209 Funding for the Program.

The Act provides funding for the costs incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

§ 500.210 Assignment or transfer of loans.

(a) Neither the Loan Documents nor the Guarantee of the Board, or any interest therein, may be modified, assigned, conveyed, sold or otherwise transferred by the Lender, in whole or in part, without the prior written approval of the Board.

(b) Under no circumstances will the Board permit an assignment or transfer of less than 100 percent of the Loan Documents and Guarantee, nor will it

permit an assignment or transfer to be made to an entity which the Board determines not to be an Eligible Lender pursuant to § 500.201.

(c) The proscription under paragraph (a) of this section shall not apply to:

(1) Transfers which occur by operation of law, unless a primary purpose of the transaction leading to such a transfer was to assign, convey or sell the loan note or Guarantee without the necessity of securing the Board's prior written approval; or

(2) An action or agreement by the Lender which has the effect of distributing the risks of the credit among other Lenders if:

(i) Neither the loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(ii) Both the unguaranteed and guaranteed portions of the loan are treated in the same manner;

(iii) The Lender remains solely responsible for the administration of the loan; and

(iv) The Board's ability to assert any and all defenses available to it under the Guarantee and the law is not adversely affected.

§ 500.211 Lender responsibilities.

(a) *General.* Lender shall comply with all provisions of the Guarantee.

(b) *Standard of care.* The Lender shall exercise due care and diligence in administering the loan as would be exercised by a responsible and prudent banking institution when administering a secured loan of such banking institution's own funds without a Federal guaranty. Such standard shall also apply to any and all approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(c) *Representation to the Board.* In addition to any other representations required by the Guarantee, the Lender shall represent to the Board that it has the ability to, and will, administer the loan, as well as to exercise the Lender's rights and pursue its remedies, including conducting any liquidation of the Security or additional Security in full compliance with the standard of care, without the need for any advice, opinion, determination, recommendation,

approval, disapproval, assistance (financial or other) or participation by the Board, except where the Board's consent is expressly required by the Guarantee, or where the Board, in its sole discretion and pursuant to the Guarantee, elects to provide same.

(d) *Covenants.* With respect to any loan guaranteed by the Board pursuant to the Act and this part, the Lender shall require the Loan Documents to contain such affirmative and negative covenants by the Borrower as are required by the terms and conditions of the Guarantee, such as the prohibition on the payment of dividends.

(e) *Monitoring.* In accordance with the Guarantee, the Lender shall monitor Borrower's performance under the Loan Documents to detect any non-compliance by the Borrower with any provision thereof, and will use its best efforts to cause Borrower's timely correction of any such noncompliance and Borrower's compliance with such provision thereafter.

(f) *Reporting.* With respect to any loan guaranteed by the Board pursuant to the Act and this part, the Lender shall provide the Board with the following information:

(1) Audited financial statements for the Borrower for the prior fiscal year;

(2) Projected balance sheet, income statement, and cash flows for the Borrower for each year remaining on the term of the loan within 60 days of the Borrower's fiscal year end; and

(3) A completed signed copy of Form "Quarterly Compliance Statement," that includes information on the recent performance of the loan, within 15 days of the end of each calendar quarter.

(g) *Notices.* All written notices, requests, or demands made to the Board shall be mailed to the Board at the U.S. Department of Commerce, Washington, D.C. 20230, except as otherwise specified by the Guarantee or as directed by the Board. Lender shall notify the Board in writing without delay of:

(1) Deterioration in the internal risk rating of a loan guaranteed under this Program within 3 business days of such action by the Lender;

(2) The occurrence of each event of default under the Loan Documents or

Guarantee promptly, but not later than 3 business days, of the Lender's learning of such occurrence; and

(3) Any other notification requirements as provided by law, or by the terms of the Guarantee or Loan Documents.

§ 500.212 Liquidation.

(a) The Board may take, or direct to be taken, any action in liquidating the Security which the Board determines to be necessary or proper, consistent with Federal law and regulations.

(b) Pursuant to the Guarantee, upon written demand by the Lender and whether or not the Board has made any payment under the Guarantee, the Board, at the Board's sole option shall have the right to require that the Lender, solely or jointly with the Board, conduct to completion the liquidation of any or all of the Security. The Board may choose to conduct the liquidation itself.

§ 500.213 Termination of Guarantee.

(a) The Board, in its discretion, shall be entitled to terminate all of the Board's obligations under the Guarantee, without further cause, by giving written notice to the Lender of such termination, in the event that:

(1) The closing of the loan shall not have occurred in accordance with the terms and conditions of the Guarantee;

(2) The Guarantee fee required by § 500.208(d) shall not have been paid;

(3) The Lender shall have released or covenanted not to sue the Borrower or any other guarantor, or agreed to the modification of any obligation of any party to any agreement related to the loan, without the prior written consent of the Board;

(4) Lender has released the Board from its liability and obligations under the Guarantee;

(5) Lender has been repaid in full on the loan;

(6) Lender shall have made any incorrect or incomplete representation to the Board in any material respect in connection with the Application, the Guarantee or the Loan Documents; or

(7) Lender failed to comply with any material provision of the Loan Documents or the Guarantee.